for reasons of policy, — as to encourage tenants to make the best use of their leaseholds, — the law allows parties by contract or custom to vary this rule to a certain extent. Contract and custom, however, cannot change the nature of the articles; and while the contract may, as between the parties themselves, allow them to treat an article as personalty, yet, unless it be actually severed, it remains realty. *Prescott* v. *Wells-Fargo Co.*, 3 Nev. 91. These considerations are well brought out by the principal case. After the sale of the greenhouse, the vendee acquired a contract right in the nature of a profit, that is to say, a right to go upon the land and sever and remove the greenhouse. Its nature, however, was not changed by the sale, and it remained realty as before. As the formalities necessary to a sale of real estate were not complied with, it would seem that title had not passed. Moreover, there is a strong objection to the principal case upon grounds of policy. It is the purpose of the law to have the true title to property appear upon the public records. If the sale of the greenhouse had been made by deed and not recorded, the law would allow a subsequent mortgagee to prevail. It seems, then, against the spirit of the recording acts to allow parties to avoid them by a parol sale; especially where, as in the principal case, it operates to the detriment of innocent third parties who have advanced their money upon the faith of the public records. *Powers* v. *Dennison*, 30 Vt. 752.

Jurisdiction Quasi in Rem. — The case of *Pennoyer* v. *Neff*, 95 U. S. 714, has settled definitely, if indeed it could ever have been doubted, that a personal judgment against a defendant, who is neither domiciled nor served within the jurisdiction, is invalid. While it is true, then, that on such a judgment the defendant's property, even within the state, cannot be levied on, there are nevertheless certain ways in which such property can be dealt with by the state, although the owner is domiciled elsewhere. The state may take such property by the exercise of eminent domain; it may, if necessary, sell it for the payment of taxes; and it may equally well provide methods of having the rights to it judicially determined by its courts of law. Judicial proceedings, however, require that the property should in some manner be brought either actually or constructively before the court for adjudication, and that parties interested be given a fair chance to be heard.

A question as to what constitutes a fulfilment of the former of these requisites arose in a recent decision in Ohio, where a wife, having been deserted by her husband, brought suit to have a certain amount of alimony made a charge on her husband's property within the jurisdiction. The husband being a non-resident, service was made by publication, and a preliminary injunction was granted restraining him from disposing of the property, but no seizure or attachment took place. The court, however, proceeded and ultimately made a decree in favor of the plaintiff, charging the alimony on the defendant's property. *Benner* v. *Benner*, 58 N. E. Rep. 569. Now, although it is generally recognized that jurisdiction for divorce exists, if the plaintiff is domiciled within the jurisdiction, though there be no personal service on the defendant, yet it is well settled that no valid judgment for alimony can be given without having the defendant personally within the power of the court. *Rigney* v. *Rigney*, 127 N. Y. 408; *Lytle* v. *Lytle*, 48 Ind. 200. The court in the principal

case seemed to admit this, and allowed the action as a proceeding *quasi in rem*, relying on the preliminary injunction as being sufficient to bring the property within its control, so as to deal with it judicially. This, however, seems hardly sound. An injunction assumes for its validity personal jurisdiction over the defendant himself; without that, it is a mere nullity. The object of seizure in the ordinary case is not merely to inform the owner of the property of the proceedings which are going on, but to give the court jurisdiction by bringing the property within its control. While it would, perhaps, be difficult to define just what steps are necessary for this purpose, it seems impossible to regard a void order as a sufficient taking charge of the property. Further, it cannot be contended that the fact that the petition expressly asks relief as to the land in question will of itself operate to bring the defendant's title to that land before the court; for such reasoning would render service on a garnishee unnecessary in any case. We have then simply a case where neither the property, nor the defendant, nor any one owning an interest in the property, are before the court. The mere assertion of control over property cannot actually give control any more than the mere assertion of jurisdiction over the person of the defendant will give validity to a personal judgment against him.

LIABILITY OF CORPORATIONS ON CONTRACTS OF THEIR PROMOTERS. — The English doctrine as to a promoter's contract treats that contract as existing between the promoter in his individual capacity and the third party, the corporation in whose behalf and in whose name the contract is made being unable to adopt, ratify, or confirm the transaction. *In re Northumberland Hotel Co.*, 33 Ch. D. 16. Accordingly a recent English decision holds that a company is not bound by a contract made in its behalf before incorporation, even though after incorporation it had expressly adopted the agreement. *Bagot Pneumatic Tyre Co.* v. *Clipper Pneumatic Tyre Co.*, 17 Times L. R. 117. The English doctrine is based on the established rule of law that acts done in behalf of a non-existent principal cannot afterwards be ratified. Consequently, it is said that, as a corporation does not legally exist until it is incorporated, it cannot ratify any act done in its behalf prior to that time. On technical grounds it is impossible to criticize the English doctrine, for a ratification relating back to the time when there was no principal seems an absurdity. Practically, however, the result reached in many cases is undesirable, and the courts in some jurisdictions in this country have been inclined to look behind the corporate entity and at the real principals, who were existing at least as a potential corporation at the time the contract was made. Accordingly a ratification sometimes has been allowed. *Whitney* v. *Wyman*, 101 U. S. 392; *Oaks* v. *Cattaraugus Water Co.*, 143 N. Y. 430; see 8 HARVARD LAW REVIEW, 357. However, the weight of authority is *contra* to such a view. Alger on Promoters, § 199. The difficulty with the doctrine of these cases, as expressed in *Oaks* v. *Cattaraugus Water Co.*, *supra*, is that it does violence to the established principles of ratification. A third doctrine has consequently arisen in this country, and represents perhaps the prevailing American view. It holds that though a corporation cannot ratify it may confirm its promoter's contracts by what is called adoption or acceptance — the theory being based on the